of Administration to Taib, subject to the usual security for the purpose of protecting the interests of the estate of Hassan.

In this case, the only asset was a small piece of land and there were debts. It was therefore proper to give leave to sell the land on extraction of the grant of Letters of Administration, on terms that the proceeds should be paid into Court, but nothing further than that could be done. It is quite impossible at this stage to know whether there are or are not any creditors of the estate of Hassan. It may well be that they would absorb the whole amount of his share in Zainab's estate and that his beneficiaries will, in fact, receive nothing. There is no machinery for ascertaining the facts in these proceedings and this alone is a sufficient reason why his estate must be the subject of separate proceedings.

To wind up two estates in the proceedings on a single petition is wholly improper and must never be done. It is true that, if the estates are small enough, revenue may not be affected, but except in the case of very small estates this also is an additional reason against the course attempted here. Where in the winding up of one estate it appears that the estate of another deceased person is a beneficiary, nothing can be done to dispose of that share until proper proceedings are taken for representation or distribution of the second estate. The difference between the positions of Zainab's creditors and Hassan's creditors in this case arises from the fact that public advertisement has been given of the intention to take proceedings to wind up Zainab's estate, but no notice has been given of any intention to wind up Hassaan's estate, and accordingly his creditors have received no warning that, unless they are active, their rights may be over-ridden. This is obviously contrary to principle. Any arguments from supposed economy or convenience must be disregarded in this matter. The rule that each estate must be dealt with separately is without exception and all Assistant Registrars and Deputy Registrars must act accordingly.

Order accordingly.

P. MOHAMED v. AMINAH d/o VEERAROW.

[Orig. Civ. Juris. (Wilson, J.) June 22, 1951]

[K.L. — Civil Suit No. 354 of 1950]

Guardianship of Infants — Muslim Children — Custody of — Discretion of Court.

If it cannot be ascertained to which sect a child belongs to and although the father is a natural guardian of his children, the question of guardianship must depend on the consideration what is best for the child as a Moslem child.

Case referred to :—

(1) *Abdul Aziz Khan v. Nanhe Khan* (1927) I.L.R. All. 332.

CIVIL SUIT.

M. N. Cumarasami for the plaintiff.

P. P. Nair for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — The plaintiff and the defendant were married in 1936 in accordance with Mahommedan rites. There are four children of the marriage and their ages now range from 6 to 13 years. Three of the children are girls and one is a boy. Some few months before the end of the Japanese occupation the plaintiff and the defendant separated and the defendant went with three children to live with her mother. According to the plaintiff he was at the time ill, suffering from typhoid and unconscious and he wishes me to believe that his wife deserted him when he was in that condition. According to the defendant she and three of the children were ill and the plaintiff asked her to go and stay with her mother and gave her $25, and took them on a bus. The reason alleged is that the plaintiff was unable to look after these sick persons carefully. The defendant denies that the plaintiff was ill. In so far as it may be material to this case I prefer the evidence of the defendant as to the reason for the separation. After going to live with her mother the defendant gave birth to the fourth child. In the year 1946 the plaintiff divorced the defendant and in 1949 defendant married a man called Mohamoo with whom she is now living. The plaintiff claims custody of the four children who are, in fact, now living with the defendant's mother and not with the defendant.

It may well be that in these circumstances the children are not now in the custody of the defendant in which case she cannot be ordered to hand over the children to the plaintiff and this action would fail for that reason. However that may be, I have considered this case on the basis that the defendant still has legal custody of all four children. In the case of *Abdul Aziz Khan v. Nanhe Khan*[1] it was held that a father is not only the natural guardian, but has an inalienable right to the custody of his minor son, unless there are overwhelming circumstances to the contrary. That

case was an application for guardianship of a minor son age about nine years, and the application was opposed by the maternal grandfather on the ground that he and his wife had been looking after the minor ever since his birth. The application was brought under the Guardianship and Wards Act which does not apply in this territory. From the report in the I.L.R. Allahabad Series Vol. 49 at p. 332 it appears that the question of Mahommedan Law was not even considered. Further the application is in regard to a male child and I am not satisfied that the decision would necessarily have been the same if the application had been in respect of a female child. In any case the decision is not binding on me. From a study of the 5th Edition Mahommedan Law by Syed Ameer Ali Vol. II, it is clear that the rights of guardianship varies according to the doctrines of the various Mahommedan schools. It is not known to what school or schools plaintiff and the defendant belong. The defendant, in point of fact, was originally a Hindu. In the circumstances I can only follow the rule which is stated at p. 252 of Syed Ameer Ali, and which has been adopted by the Court of Algiers which, in effect, is that if it cannot be ascertained to which sect the child is supposed to belong the question of guardianship must depend on a consideration of what is best for the child as a Moslem child.

In this case I am satisfied that the children are being properly brought up by their maternal grandmother with whom they had been living for about five years and latterly at any rate separate from their mother. So far as the girls are concerned I am satisfied that it is in their best interests that they should remain with their maternal grandmother who, I am sure, is more likely to give them the care of a mother than the plaintiff or his present wife who is less likely to take as much interest in the children. The plaintiff himself is, to my mind, quite unsuited to look after girls of the ages of these three. So far as the boy is concerned I have come to the conclusion that it would not be in his best interest to take him away from his three sisters with whom I am satisfied that he is receiving proper care and attention from the maternal grandmother.

It is to be noted that the plaintiff is paying $50 a month towards the maintenance of the children. I have little doubt that he brought this action because he felt that if he could get the custody of the children the cost to him of their maintenance would be less.

For these reasons the plaintiff's claim must be dismissed with costs.

Claim dismissed with costs.

N. HAMID v. PERUMAL & TWO ORS.

[Orig. Civ. Juris. (Munro, J.) June 28, 1951]

[Singapore — Suit No. 873 of 1950]

Landlord and Tenant — Control of Rent Ordinance 1947, s. 14(1)(i) — Position of tenant not in occupation by himself or any member of his family — Notice to quit — Notice served on servant — Whether properly served on tenant.

In this case the plaintiff claimed possession of premises let to the first defendant on the ground that (1) the first defendant had abandoned his tenancy and (2) he was not in occupation of the premises by himself or any member of his family. The first defendant had left the colony long before the issue of the writ but his attorney the second defendant paid the rent on his behalf and occupied the premises. A notice to quit determining the tenancy of the first defendant was served in the colony on his servant but the notice was not received by the first defendant.

Held, that a tenant who is not in occupation either by himself or any member of his family loses the protection of the Control of Rent Ordinance 1947 unless he fulfills the requirements of occupancy laid down in **Brown v. Brash**(1). A non-occupying tenant who installs in the premises an accredited agent who pays the rent on behalf of the tenant cannot be said to have wholly abandoned his tenancy.

Held further, that a notice to quit determining the tenancy served on the servant of the tenant is properly served on the tenant even though in fact the notice is never received by the tenant.

Tanham v. Nicholson(3) and

School Board for London v. Peters(4) applied.

Cases referred to:—

(1) *Brown v. Brash* (1948) 2 K.B. 247; (1948) 1 All E.R. 922.

(2) *Low Tangchang Limited v. Makbool* District Court Appeal No. 4 of 1949 (Unreported).

(3) *Tanham v. Nicholson* (1872) 5 L.R.H.L. 561.

(4) *School Board for London v. Peters* (1902) 18 T.L.R. 509.

ACTION.

K. K. Bezboruah for the plaintiff.

C. G. Menon for the defendants.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Munro, Ag. J.: — In this action the plaintiff claims possession of the ground floor of premises known as 1023 Jansen Road, Singapore, which he bought on 13th April 1948. At the time of his purchase the 1st defendant was tenant of this ground floor at a rental